There is a conflict in the cases as to the capacity in which a municipal corporation acts when constructing a sewer: It was held to be acting in its corporate or municipal capacity in *Murphy* v. *Indianapolis,* 158 Ind. 238, and in *Ostrander* v. *City of Lansing,* 111 Mich. 693; it was held to be acting in a governmental capacity in *Taggard* v. *Fall River,* 170 Mass. 325. The principal case does not pass upon the nature of the function which a municipality performs in the construction and maintenance of sewers. It is believed that the result would be the same in this case under either view of the function involved. However the principles applicable would be entirely different and unless a case discloses the view taken by the court, of the function involved viz.—whether governmental or municipal, the discussion is apt to be confusing. If the court considered the function governmental in its nature then the municipality shares the immunity of a sovereign state, in the absence of statute, and is liable only in case of a direct injury to property, either by a trespass or by maintaining a nuisance. *Hill* v. *Boston,* 122 Mass. 344; *Ashley* v. *Port Huron,* 35 Mich. 296; *Jacksonville* v. *Lambert,* 62 Ill. 519; *Vogt* v. *Grinnell,* 123 Ia. 332. A limitation to this rule is noted in *Alberts* v. *City of Muskegon,* 146 Mich. 210, 20 YALE L. J. 571; see also, 10 MICH LAW REV. 306. Under this rule it is useless for a court to discuss questions of negligence, either in the construction or the maintenance of a sewer, as the liability depends only on a direct injury to property. *Schwalk's Adm'r* v. *City of Louisville,* 135 Ky. 570, 122 S. W. 860. If the court decided that the function involved was municipal or corporate in its nature, then a distinction is noted in the cases holding the municipality liable for its negligence. In adopting a plan for improvements, the municipality is said to act in its discretionary or judicial capacity and is liable only for fraudulent or unreasonable action. *Lansing* v. *Toolan,* 37 Mich. 152; *City of Denver* v. *Kennedy,* 33 Colo. 80; *Hildeth* v. *City* of *Longmont,* 47 Colo. 79; *Johnson* v. *D. C.,* 118 U. S. 19. In the execution of the plan, the municipality is said to act ministerially and is liable for its negligence the same as any other legal individual. *Chicago* v. *Sehen,* 165 Ill. 371; *Johnson* v. *Chicago,* 258 Ill. 494; *Donahoe* v. *Kansas City,* 136 Mo. 657; *Johnson* v. *D. C.* supra. If the function involved in the principal case be considered governmental, then there is a liability for a direct injury to property; if the function be considered municipal, then there is a liability for negligence in the performance of a ministerial duty in the construction and maintenance of the sewer.

PERPETUITIES—CONDITIONS IN RESTRAINT OF ALIENATION.—Land had been conveyed to defendants in fee simple with a limitation that they were not to sell except to heirs of the grantor. Defendants resisted the foreclosure of a mortgage on this tract, contending that under their deed the execution of a mortgage to one not an heir of the grantor was void. *Held,* that the limitation in the deed was void as an unreasonable restraint on alienation. *Chappell* v. *Frick Co.,* (Ky. 1915) 179 S. W. 203.

Since the restraints imposed upon the alienation of land under the rules of feudal tenure were abolished in 1290 by the statute QUIA EMPTORES,

18 Edw. I, c. 1, the right of alienation has been considered an inseparable incident of a fee simple estate and conditions prohibiting the alienation of such an estate have been held void. LITT. § 360; COKE LITT. § 223a; 4 KENT, COM. *131; *McCleary* v. *Ellis,* 54 Iowa 311; *Blackstone Bank* v. *Davis,* 21 Pick. 42; *Todd* v. *Sawyer,* 147 Mass. 570; *Jauretsche* v. *Proctor,* 48 Pa. St. 466; *Freeman* v. *Phillips,* 113 Ga. 589; *Murray* v. *Green,* 64 Cal. 363; *Potter* v. *Coach,* 141 U. S. 296, 315. While there is this unanimity in the case of an absolute prohibition, there is a division of the authorities concerning limited restraints. One line of cases considers any restraint, however limited, upon the alienation of a fee simple estate to be inconsistent with the nature of such an estate and void. *Roosevelt* v. *Thurman,* 1 Johns. Ch. 220; *Greene* v. *Greene,* 125 N. Y. 506; *Hall* v. *Tufts,* 18 Pick 455; *Winsor* v. *Mills,* 157 Mass. 362; *Jones* v. *Pt. Huron Engine Co.,* 171 Ill. 502; *Mandlebaum* v. *McDonell,* 29 Mich. 78, 18 Am. Rep. 61; *Re Schilling,* 102 Mich. 612; *Fowlkes* v. *Wagoner* (Tenn. Ch. App.) 46 S. W. 586; *Anderson* v. *Cary,* 36 Ohio St. 506; *Lattimer* v. *Waddell,* 119 N. C. 370; *Zillmer* v. *Landguth,* 94 Wis. 607; *In re Roscher,* L. R. 26, Ch. Div. 801. The other line of authorities proceeds on the theory that restraints on the alienation of a fee, which are limited and reasonable in their application and as to the time during which they will operate, are valid and will be upheld. *Stewart* v. *Brady,* 3 Bush (Ky.) 623; *Wallace* v. *Smith,* 113 Ky. 263; *Langdon* v. *Ingram,* 28 Ind. 360; *Earls* v. *McAlpine,* 27 Grant Ch. (U. C.) 161; *Chisholm* v. *London etc. Co.,* 28 Ont. Rep. 347. As is indicated in the principal case, there is no general rule by which it can be determined what restraints are reasonable and what unreasonable; but each case must be decided on its own circumstances. This rule is practically confined to Kentucky and Canada, but is favorably commented on in numerous dicta. The rule seems to have originated in an early misapprehension of *Large's Case,* 2 Leon. 82, 3 Leon. 182. See *Mandlebaum* v. *McDonnell,* supra, at p. 103. The courts which follow it, however, think it now too late to conform to what is now considered to be a more accurate construction of that ancient case, as it would involve the alteration of an established rule of property in those jurisdictions. *Fowlkes* v. *Wagoner,* supra, at p. 593. Nevertheless the weight of authority and reason is with the rule first considered and it should be adopted wherever the question is still open.

RAILROADS—COVENANT TO MAINTAIN DEPOT.—Defendant railroad's assignor had covenanted with plaintiff to maintain a depot at X, and such maintenance of the depot was discontinued by defendant after a period of eighteen months from the time of the making of the covenant; upon the petition of the plaintiff for a decree requiring defendant to specifically perform the covenant, *held* that the maintaining of the station for the above mentioned period would not amount to a full performance of the covenant so long as the rights of the public to be served by the railroad had not intervened so as to make further performance burdensome and inequitable as against those interests. *Harper et al.* v. *Virginian Ry. Co.* (W. Va. 1915), 86 S. E. 919.

The question of what constitutes a full performance of a covenant to